PP v. MAHIADDIN MD YASIN

COURT OF APPEAL, PUTRAJAYA
HADHARIAH SYED ISMAIL JCA
AZMI ARIFFIN JCA
SM KOMATHY SUPPIAH JCA
[CRIMINAL APPEAL NO: W-05-296-08-2023]
16 APRIL 2024

Abstract – *(i) In a case where all of the ingredients of an offence under s. 23(1) of the Malaysian Anti-Corruption Commission Act 2009 have been stated, the charges are considered clear and unambiguous. The particulars in each of the charges are sufficient to give the accused notice of the matter with which he was charged and he would not be misled in any manner whatsoever. There is no necessity on the prosecution to set out the manner or give further particulars as to how the offence is committed; (ii) There is a distinction between an error in stating the ingredients of an offence and an error in stating the particulars of an offence. If it is an error in stating the ingredients of an offence, the defective charge is not curable under s. 422 of the Criminal Procedure Code ('CPC'). Whereas, an error in stating the particulars of an offence is curable under ss. 156 and 422 of the CPC.*

CRIMINAL PROCEDURE: *Charge – Defective charge – Allegation of – Whether charges disclosed no offence under s. 23(1) of Malaysian Anti-Corruption Commission Act 2009 – Whether there was breach of s. 154 of Criminal Procedure Code ('CPC') – Distinction between error in stating ingredients of offence or error in stating particulars of offence – Whether charges curable under ss. 156 and 422 of the CPC – Whether charges clear and unambiguous*

CIVIL PROCEDURE: *Striking out – Appeal against – Appeal against striking out of charges – Defective charge – Allegation of – Whether charges disclosed no offence under s. 23(1) of Malaysian Anti-Corruption Commission Act 2009 – Whether there was breach of s. 154 of Criminal Procedure Code ('CPC') – Distinction between error in stating ingredients of offence or error in stating particulars of offence – Whether charges curable under ss. 156 and 422 of CPC – Whether charges clear and unambiguous – Whether fit and proper case for striking out*

STATUTORY INTERPRETATION: *Definition – Associate – Organisation and society – Common feature – Whether group of people with common aim and interest or for particular purpose – Whether court ought to be more liberal in interpreting word 'organisation' to include society, club, partnership or association – Whether 'society' falls within definition of 'organisation' – Whether political society comes within definition of associate as defined under s. 3(c) of Malaysian Anti-Corruption Commission Act 2009*

The respondent was charged at the Sessions Court with four offences under s. 23(1) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act'), for *inter alia*, using his position as a public officer, a Prime Minister of Malaysia and President of Parti Pribumi Bersatu Malaysia ('PPBM'), to accept gratification. The respondent filed a notice of motion at the High Court seeking for the following orders, *inter alia*: (i) that the charges proffered against him be set aside or struck out; and (ii) that the applicant be discharged and acquitted from all the criminal charges. The notice of motion was based on the following grounds: (i) all of the charges disclosed no offence under s. 23(1) of the MACC Act; and (ii) in breach of s. 154 of the Criminal Procedure Code ('CPC'), all of the criminal charges were lacking in particulars as to how the applicant had allegedly abused his position or office for the purpose of gratification. The High Court Judge ('HCJ') agreed with the respondent and, consequently, struck out the charges and acquitted and discharged the respondent. Aggrieved, the appellant appealed. The appellant raised these grounds of appeal: (i) the HCJ erred in deciding that the four charges were defective because they did not disclose an offence known to law primarily on the basis PPBM was not an organisation which fell under the definition of 'associate' as provided under the MACC Act; and (ii) even if the charges were defective (which was denied), the HCJ erred in invoking his inherent power to strike down the same as the respondent's application was an abuse of process; premature and the trial of the case had not started and this was not a fit and proper case for striking out. The sole question for determination was whether the High Court made a correct decision in striking out the charges.

Held (allowing appeal)

Per Hadhariah Syed Ismail JCA delivering the judgment of the court:

(1) Section 23(1) of the MACC Act does not require the appellant to state in each charge whether 'the respondent made any decision' or 'took any action' for the gratification. How the offence was committed related to particulars of the offence and evidence would be adduced at the trial to show its occurrence. Therefore, the error or omission on the part of the appellant to state in each of the four charges whether the respondent made any decision or took any action was not an error in stating the ingredients of the offence. It was an error in stating the particulars of the offence. Thus, the HCJ erred when he failed to make a distinction between an error in stating the ingredients of the offence or an error in stating the particulars of the offence. (para 52)

(2) The High Court was bound by the Federal Court case of *Ravindran Ramasamy v. PP* where it was explained the distinction between error in stating ingredients of the offence and error in stating the particulars of the offence. If it was an error in stating the ingredients of the offence,

the defective charge was not curable under s. 422 of the CPC. Whereas, an error in stating the particulars of the offence was curable under ss. 156 and 422 of the CPC. In the absence of any distinction and finding made on the nature of the error, the HCJ had erred when he held the charges were defective and not curable under ss. 156 and 422 of the CPC. (para 53)

(3) Each of the four charges stated that the respondent was an officer of a public body. The respondent was charged in his capacity as the Prime Minister of Malaysia and President of PPBM. Therefore, the first ingredient of the offence was stated. The charge also alleged the respondent had used his position. Hence, the second ingredient was also stated. Next, the charge specifically mentioned the word gratification. Therefore, the third ingredient was also stated. The fourth ingredient was also satisfied because the charge stated the gratification was for his associate, namely PPBM. As all of the ingredients of an offence under s. 23(1) have been stated, the charges were clear and unambiguous. The particulars in each of the charges were sufficient to give the respondent notice of the matter with which he was charged. The respondent was not misled in any manner whatsoever merely because of the lack of particulars. As such, there was no necessity on the prosecution to set out the manner or give further particulars as to how the offence was committed. The HCJ erred when he held the charges were not clear and the respondent was misled. (para 55)

(4) The common feature of organisation and society was that they were an organised group of people with common aim and interest or for a particular purpose. The group consists of more than seven people. What makes a society and organisation similar in nature is that it is a group of people who work together in an organised way for a shared goal. They have their own rules and regulations. Common sense dictates that the court must be more liberal in interpreting the word organisation to make it wide enough to include a society, club, partnership or association. Given the ordinary meaning of organisation is a group formed for a particular purpose and society is also a group formed for a particular purpose, hence society would fall within the definition of organisation. It followed that PPBM, a political society, came within the definition of associate as defined under s. 3(c) of the MACC Act. The HCJ erred in law when he ruled that the four charges did not disclose any offence known to law. Consequently, the HCJ erred in striking out the charges on the ground of an abuse of process. (paras 59-63)

Case(s) referred to:
Ahmad Zubair Hj Murshid v. PP [2014] 9 CLJ 289 ***(refd)***
M Narayanan Nambiar v. State Of Kerala AIR 1963 SC 1116 ***(refd)***
PP v. Arul Kanda Kandasamy & Another Case [2023] 3 CLJ 770 HC ***(dist)***
PP v. Dato' Sri Mohd Najib Hj Abd Razak [2020] 8 CLJ 319 HC ***(dist)***
Ravindran Ramasamy v. PP [2015] 3 CLJ 421 FC ***(refd)***
Seaford Court Estates Ltd v. Asher [1949] 2 KB 481 ***(refd)***
Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors [2021] 6 CLJ 199 FC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 152, 154, 156, 173(g), 422
Malaysian Anti-Corruption Commission Act 2009, ss. 3(c), 17A(8)(a), (b), 23(1)
Penal Code, s. 409
Societies Act 1966, ss. 2, 7

For the appellant - Mohd Dusuki Mokhtar, Wan Shaharuddin Wan Ladin, Ahmad Akram Gharib, Norzilati Izhani Zainal, Ng Siew Wee, Zander Lim Wai Keong, Nor Asma Ahmad & Noralis Mat; DPPs
For the respondent - Hisyam Teh Poh Teik, K Kumaraendran, Amer Hamzah Arshad, Rosli Dahlan, Mohammad Isa Mohd Basir, Chetan Jethwani, Dev Kumaraendran, Low Wei Loke, Kee Wei Lon, Teh See Khoon, Joshua Tay H'ng Foong, Siti Summaiyah Ahmad Jaafar & Tang Jia Yearn; M/s Chetan Jethwani & Company

[Editor's note: For the High Court judgment, please see Mahiaddin Md Yasin lwn. PP [2023] 8 CLJ 756 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Hadhariah Syed Ismail JCA:

Introduction

[1] The respondent, Mahiaddin bin Md Yassin was charged at the Kuala Lumpur Sessions Court with four offences under s. 23(1) of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act). *Via* a notice of motion, filed at the Kuala Lumpur High Court, he applied to strike out all four charges on two grounds. The first ground is that none of the four charges disclose any offence known to law. The second ground is that the four charges are lacking in material particulars in breach of s. 154 of the Criminal Procedure Code.

[2] The learned High Court Judge agreed with the respondent on both grounds. Consequently, on 15 August 2023, the High Court struck out the four charges and acquitted and discharged the respondent.

[3] Aggrieved with the High Court's decision, the appellant appealed to this court. We heard and allowed the appeal on 28 February 2024. We now give the reasons for our decision.

The Charges

Pertuduhan Pertama

Bahawa kamu di antara 8 Februari 2021 dan 25 Februari 2021, di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan kamu untuk satu suapan, iaitu wang berjumlah RM200,000,000.00 (Ringgit Malaysia Dua Ratus Juta) daripada Bukhary Equity Sdn. Bhd., bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Pertuduhan Kedua

Bahawa kamu di antara 1 Mac 2020 dan 20 Ogos 2021, di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan kamu untuk satu suapan, iaitu wang berjumlah RM1,000,000.00 (Ringgit Malaysia Satu Juta) daripada Syarikat Nepturis Sdn Bhd, bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Pertuduhan Ketiga

Bahawa kamu di antara 1 Mac 2020 dan 20 Ogos 2021, di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan kamu untuk satu suapan, iaitu wang berjumlah RM19,500,000.00 (Ringgit Malaysia Sembilan Belas Juta Lima Ratus Ribu) daripada syarikat Mamfor Sdn Bhd, bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Pertuduhan Keempat

Bahawa kamu di antara 1 Mac 2020 dan 20 Ogos 2021, di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan kamu untuk satu suapan, iaitu wang berjumlah RM12,000,000.00 (Ringgit Malaysia Dua Belas Juta) daripada Azman bin Yusoff (No. K/P: 720103-

A 11-5747), bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Notice Of Motion

B **[4]** As noted earlier, the respondent had filed a notice of motion at the Kuala Lumpur High Court on 18 April 2023, seeking for the following orders:

(i) that the first charge, second charge, third charge and fourth charge that the respondent as the Public Prosecutor had proffered against the C applicant on 10 March 2023 in the Sessions Court of Kuala Lumpur under the Criminal Trial No. WA-61R-5-03-2023 to be set aside or struck out; and

(ii) that the applicant be discharged and acquitted from all the criminal D charges; or

(iii) that in the alternative, the entire criminal proceedings pertaining to all the charges be stayed permanently; and

(iv) any further or other reliefs deems fit and proper by the court.

E **[5]** The notice of motion was based on the following grounds:

(i) all of the abovementioned criminal charges disclosed no offence under s. 23(1) of the Malaysian Anti-Corruption Commission Act 2009; and/or;

F (ii) all of the abovementioned criminal charges are an abuse of process; and/or; and

(iii) further and/or in the alternative, in breach of s. 154 of the Criminal Procedure Code, all of the abovementioned criminal charges are lacking in particulars as to how the applicant had allegedly abused his position G or office for the purpose of gratification.

[6] For the purposes of this appeal, we will only deal with ground (i) and (iii) as specified in the notice of motion. We shall refer to ground (ii) as the first ground and ground (iv) as the second ground. With regard to the first ground, the respondent raised two issues as follows:

H (i) whether PPBM is organisation within the definition of associate under s. 3(c) of the MACC Act; and

(ii) whether the words "business or affairs" in s. 3(c) means commercial organisation and PPBM being a political party is not a commercial I organisation and therefore, PPBM cannot be charged under s. 23(1) of the MACC Act.

With regard to the second ground, the issue raised by the respondent was there were material defects in the four charges as it did not state whether the charge against the respondent was in relation to a decision taken or on action taken by him and in relation to what matter. The respondent contended the defects were not curable under ss. 156 or 422 of the CPC.

[7] In the course of reading the appeal records, we noticed that the contentions of the parties on both grounds before us and before the High Court are similar in substance.

[8] Before we deal with the two grounds, we wish to deal first with the inherent power of the High Court to strike out the charges.

Inherent Power Of The High Court

[9] It was not in dispute that the High Court is empowered to strike out the four charges if they do not disclose any offence known to law. The appellant had conceded this point in para. 39 of their written submission before the High Court (Record of Appeal Jilid 3(2) p. 220) but contended that there was nothing wrong with the four charges. It was argued that the charges disclosed the respondent had committed an offence of corruption under s. 23(1) of the MACC Act 2009. Hence, the High Court ought not to have struck out the four charges.

[10] It is trite law that the court is to exercise its striking out power only in exceptional circumstances. In *Ahmad Zubair Hj Murshid v. PP* [2014] 9 CLJ 289, the Federal Court said at para. [26] "we must caution ourselves that the inherent powers of the court must be exercised in exceptional circumstances to prevent undue oppression and abuse of the process of the court ...".

[11] Before us, the appellant submitted that as this case is registered in the Sessions Court, the respondent ought to have applied to strike out the charges under s. 173(g) of the Criminal Procedure Code and not by filing a notice of motion at the High Court.

Section 173(g) CPC reads:

> (g) Nothing in paragraph (f) shall be deemed to preven the Court from discharging the accused at any previous stage of the case if for reasons to be recorded by the Court it considers the charge to be groundless.

[12] The quick response from Dato' Hisyam Teh Poh Teik, the counsel for the respondent, was that a motion was filed as the respondent sought a total acquittal and discharge. He pointed out that s. 173(g) only empowered the Sessions Court to grant a discharge not amounting to an acquittal.

[13] In the appeal before us, learned counsel for the respondent submitted the four charges are an abuse of process as the charges do not disclose an offence known to law. Judicial time and resources will go to waste. In support, reliance was placed on the case of *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 6 CLJ 199; [2021] 5 MLJ 209.

[14] In *Sundra Rajoo*'s case, the charges against him were challenged by way of judicial review proceedings. Briefly, the facts in that case are as follows. The appellant (Sundra Rajoo) was formerly a director of the Asian International Arbitration Centre ('AIAC'). AIAC was established under the auspices of the Asian African Legal Consultative Organization (AALCO). During his tenure as the director of AIAC, the appellant authored a book entitled *Law, Practice and Procedure of Arbitration* (2nd edn, Lexis Nexis 2016). The appellant used the AlAC's funds to purchase copies of his book for AIAC. The appellant claimed that AIAC and AALCO were fully aware of the transaction and had approved them. Nevertheless, the appellant was charged with three offences of criminal breach of trust under s. 409 of the Penal Code.

[15] It bears mention that under the Second Schedule Part II of International Organizations (Privileges and Immunities) Act 1992 (Act 485), the appellant enjoyed immunity from suit and from other legal process in respect of acts and things done in his capacity as such officer. Fearing that the respondent would not respect his legal immunity status, the appellant filed judicial review application at the Kuala Lumpur High Court seeking among others declaratory and prohibitory reliefs to give effect to his legal immunity status and to stop all or any criminal proceedings in that regard.

[16] The High Court held the phrase immunity "from other legal process" included criminal proceedings and allowed the appellant's judicial review application. On appeal by the prosecution, the Court of Appeal set aside the order of the High Court, holding Act 485 did not accord the appellant complete immunity from criminal prosecution. On further appeal by the appellant, the Federal Court reversed the Court of Appeal's decision and restored the High Court's order. In delivering the judgment of the court, Her Ladyship Tengku Maimun Tuan Mat, CJ said at paras. 88 and 89 of the reported judgment:

> [88] ... If the law has been misunderstood or misapplied by the AG/PP, as apparent in the present appeal, the appellant ought to be given an opportunity to have such discretion reviewed by way of judicial review ..
>
> [89] In an appropriate and exceptional cases, it would be better to quash the decision to prosecute before the criminal proceedings commence so that unnecessary suffering of the accused caused by improper prosecution can be minimized.

[17] In our opinion, *Sundra Rajoo*'s case is not applicable to the present appeal because that case involved legal immunity from criminal prosecution. This means the prosecution could not charge the appellant. The charges against the appellant were an illegality and an abuse of process. Whereas, in the present appeal, the issues do not pertain to immunity.

[18] At the end of the day, this court will have to decide whether the four charges against the respondent are an abuse of process. We now move to consider the first ground of complaint.

The First Ground – Four Charges Did Not Disclose Offences Known To Law

[19] Section 23 of the MACC Act reads:

(i) any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence; and

(ii) for the purposes of sub-s. (1), an officer of a public body shall be presumed, until the contrary is proved, to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly.

[20] Section 3 of the MACC Act defines the word "associate" as follows:

'associate', in relation to a person, means:

(a) any person who is a nominee or an employee of such person;

(b) any person who manages the affairs of such person;

(c) any organization of which such person, or any nominee of his, is a partner, or a person in charge or in control of, or has a controlling interest in, its business or affairs;

(d) any corporation within the meaning of the Companies Act 1965, of which such person, or any nominee of his, is a director or is in charge or in control of its business or affairs, or in which such person, alone or together with any nominee of his, has or have a controlling interest, or shares to the total value of not less than thirty per centum of the total issued capital of the corporation; or

(e) the trustee of any trust, where:

(i) the trust has been created by such person; or

(ii) the total value of the assets contributed by such person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty per centum of the total value of the assets of the trusts.

[21] At the High Court, learned counsel for the respondent contended as follows:

(i) the meaning of the word associate in s. 3 of the MACC Act is exhaustive and restricted to five categories of persons;

(ii) Parti Pribumi Bersatu Malaysia (PPBM) is a political party registered under s. 7 of the Societies Act 1966 and is a society. A society does not fall within the definition of (associate) under s. 3 of the MACC Act;

(iii) the word organisation in the meaning of associate in s. 3(c) of the MACC Act does not include a society; and

(iv) the word society is not mentioned in s. 3(c) of the MACC Act.

[22] To counter the respondent's contention, the appellant argued:

(i) the word organisation in the meaning of associate in s. 3(c) of the MACC Act includes a society;

(ii) the word organisation is synonymous with the word society which carries the same meaning *ie*, association of a group of people for a particular purpose;

(iii) PPBM a political party which consists of a group of people having the same purpose is an organisation within the meaning of associate in s. 3(c) of the MACC Act;

(iv) the dictionary meaning of the word organisation, both in Bahasa Malaysia and English language are as follows:

(a) Kamus Dewan (Edisi Ketiga), the word "organisasi" means "kesatuan (susunan dsb) yang terdiri daripada bahagian-bahagian (orang dll) dalam sesuatu pertubuhan (perkumpulan, perbadanan, dll) untuk tujuan-tujuan tertentu (kepentingan bersama dsb), pertubuhan: kaum wanita, politik."

(b) Oxford's Dictionary defined "organization" as "an organized group of people with a particular purpose, such as a business or government department."

(c) Black's Law Dictionary defined "organization" as:

1. "A group that formed for a particular purpose < the World Trade Organization > Also termed society.

2. The planning and arranging of something so that it will be effective and successful < the effort will require a good deal of organization.

(v) in interpreting the word organisation in s. 3 of the MACC Act, the court must give it a natural and ordinary meaning which is "an association of a group of people in a society for a particular purpose."

[23] To support their contention, the appellant cited the House of Lords decision in *Seaford Court Estates Ltd v. Asher* [1949] 2 KB 481, wherein Lord Denning LJ said the following:

> Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and even it were, it is not possible to provide for them in terms free from ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been

unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work in the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.

Put into homely metaphor it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

[24] The learned High Court Judge accepted the respondent's contentions. This can be found in paras. 52 to 55 and paras. 58 to 64 of the grounds of judgment:

[52] Jelas kepada saya bahawa di dalam Akta SPRM terdapat perbezaan antara organisasi dan pertubuhan. Organisasi merujuk kepada organisasi sebagaimana yang dinyatakan di bawah perenggan (c) seksyen 3 manakala pertubuhan merujuk kepada pertubuhan di bawah seksyen 7 Akta Pertubuhan 1966.

[53] Saya tidak setuju dengan hujahan TPR bahawa perkataan organisasi dalam takrif sekutu di perenggan 3(c) seksyen 3 Akta SPRM merangkumi suatu pertubuhan.

[54] Organisasi dan pertubuhan merujuk kepada dua entiti yang berbeza. Perkataan organisasi tidak boleh diperluas untuk merangkumi suatu pertubuhan.

[55] Makna kamus (dictionary meaning) perkataan organisasi seperti yang dihujah oleh TPR tidak boleh diterima pakai kerana ia membuatkan perkataan pertubuhan dalam seksyen 3 dan seksyen 71(1) Akta SPRM redundant.

[58] Jika hasrat Parlimen menghendaki takrif sekutu di bawah seksyen 3 Akta SPRM termasuk suatu pertubuhan yang didaftarkan di bawah seksyen 7 Akta Pertubuhan 1966, maka seharusnya perkataan pertubuhan dimasukkan di bawah takrif sekutu, sebagaimana perkataan pertubuhan dimasukkan di bawah takrif badan awam. Perkataan pertubuhan tidak dimasukkan di bawah takrif sekutu menunjukkan dengan jelas hasrat Parlimen bahawa takrif sekutu tidak termasuk suatu pertubuhan.

[59] Pada pandangan saya, perkataan organisasi dalam takrif sekutu di perenggan (c) seksyen 3 Akta SPRM tidak termasuk suatu pertubuhan.

A [60] Suapan bagi sekutunya PPBM adalah suatu elemen bagi kesalahan di bawah seksyen 23(1) Akta SPRM. PPBM suatu pertubuhan bukan sekutu seperti yang ditakrifkan di bawah seksyen 3 Akta SPRM.

[61] Empat pertuduhan tersebut yang menyatakan suapan bagi sekutunya PPBM tidak mendedahkan suatu kesalahan di bawah seksyen 23(1) Akta SPRM.

B

[62] Jelas kepada saya pemohon (now respondent) dituduh dengan suatu kesalahan yang tidak diperuntukkan oleh undang-undang (offence unknown in law).

[63] Empat pertuduhan tersebut cacat kerana tidak mendedahkan suatu kesalahan di bawah seksyen 23 (1) Akta SPRM.

C

[64] Pertuduhan yang tidak mendedahkan suatu kesalahan di bawah seksyen 23(1) Akta SPRM adalah suatu salah laksana keadilan.

[25] In short, the High Court Judge held that PPBM is a society and not an organisation. As such, it cannot be categorised under the definition of 'associate'. Accordingly, he held that the four charges under s. 23(1) were illegal.

D

[26] The second ground on which the respondent contended that PPBM is not an organisation within the definition of associate in s. 3(c) of the MACC Act was based on the definition given to the word business. In s. 3(c), organisation is defined as:

E

> (c) any organization of which such person, or any nominee of his, is a partner, or a person in charge or in control of, or has a controlling interest in, its business or affairs.

F **[27]** The word "business" in the MACC Act is defined as:

> "business" means any activity carried on for the purpose of gain or profit and includes all property derived from or used in or for the purpose of carrying on such activity, and all the rights and liabilities arising from such activity.

G **[28]** Based on the definition given to the word 'business', the respondent argued that the organisation meant in s. 3(c) is an organisation of a commercial nature and not of a political nature,

[29] Next, the respondent argued, applying the maxim "*noscitur a sociis*", the words "or affairs" after the word "business" in s. 3(c) was governed by the word "business". Therefore, the word "or affairs" means "affairs relating to business."

H

[30] The meaning of the maxim *noscitur a sociis* and its application in interpreting a statutory provision is explained in *NS Bindra's Interpretation of Statutes* (12th edn). According to the learned author, *noscitur a sociis* (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the import of words in a statutory

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provision. Before the principle of *noscitur a sociis* can be pressed into service, it must be shown that the words are employed in the same sense or that they are susceptible of analogous meaning. If the legislative intent is clear and plain, the maxim must give way. But when the import is doubtful, associated words can explain and limit the application of each other.

[31] To sum up, the respondent argued that s. 3(c) of the MACC Act only applies to a commercial organisation that carries on a business and not to PPBM, a political party.

[32] On the other hand, the appellant contended *noscitur a sociis* does not apply because the word "or affairs" is plain and clear and should be given its ordinary meaning.

[33] To further support their contention, the appellant referred us to s. 17A(8) of the MACC Act which reads as follows:

> 17A. Offences by commercial organization
>
> (8) For the purposes of this section, "commercial organization" means:
>
> (a) a company incorporated under the Companies Act 1965 [Act 125] and carries on a business in Malaysia or elsewhere;
>
> (b) a company wherever incorporated and carries on a business or part of a business in Malaysia;
>
> (c) a partnership:
>
> (i) under the Partnership Act 1961 [Act 135] and carries on a business in Malaysia or elsewhere; or
>
> (ii) which is a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [Act 743] and carries on a business In Malaysia or elsewhere; or
>
> (d) a partnership wherever formed and carries on a business or part of a business in Malaysia.

[34] The appellant pointed out that s. 17A(8)(a) to (d) defines commercial organisation as a company or partnership that carries on a business. None of para. (a) to (d) defines commercial organisation as a company or partnership that carries on its affairs. This clearly showed that the word "business" and "affairs" were not intended by the Parliament to be read in the context of *noscitur a sociis* as submitted by the respondent. If it was the intention of the Parliament to include "affairs" in the definition of "commercial organisation", then the word "affairs" will have to be added to each para. 17A(8)(a) to (d) to read as follows (to illustrate):

> (a) a company incorporated under the Companies Act 1965 and carries on a business or its affairs in Malaysia or elsewhere.

[35] Finally, the appellant submitted that if s. 3(c) is meant to apply only to a commercial organisation as submitted by the respondent, this would mean that an organisation which does not carries on a business *eg*, a non-governmental body (NGO) that receives gratification cannot be charged under s. 23 of the MACC Act. This could not have been the intention of the Parliament.

[36] We agree with the appellant's contention that the word "affairs" in s. 3(c) is clear and plain and should be given its ordinary meaning. Therefore, the principle of *noscitur a sociis* has no application.

[37] It is observed that the learned High Court Judge did not make any finding on the maxim *noscitur a sociis*.

The Second Ground – 4 Charges Are Lacking In Particulars

[38] At the High Court, learned counsel for the respondent argued that the four charges did not comply with s. 154 of the Criminal Procedure Code for they did not state the manner in which the respondent had abused his position in the commission of the offence. It was submitted that the non-compliance with s. 154 of the CPC rendered the charges defective and not curable under ss. 156 or 422 of the CPC.

[39] On the other hand, the learned DPP submitted the charges were not defective. The charges were clear and contained complete particulars as required under ss. 152, 153 and 154 of the CPC. Section 23(1) of the MACC Act does not require the charge to state/specify the manner in which the offence was committed by the respondent as the prosecution will adduce evidence at the trial to show how the offence was committed.

[40] Section 154 of the CPC reads:

> 154. When the nature of the case is such that the particulars mentioned in sections 152 and 153 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

[41] In *Ravindran Ramasamy v. PP* [2015] 3 CLJ 421, the Federal Court referred to ss. 152 to 154, 156 and 422 of the Criminal Procedure Code (CPC) and said:

> Section 152 of the CPC provides that the charge shall "state the offence with which the accused is charged" and mention "the law and section of the law against which the offence is said to have been committed". Section 153 of the CPC provides that "the charge shall contain such particulars as to the time and place of the alleged offence … as are reasonably sufficient to give the accused notice of the matter with which he is charged". And when the nature of the case is such that the particulars mentioned in ss. 152 and 153 do not give the accused sufficient

notice of the matter with which he is charged, s. 154 of the CPC provides that "the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Pursuant to s. 156 of the CPC," no error in stating the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars shall be regarded, at any stage of the case, as material unless the accused was in fact misled by that error or omission. However, in view of s. 422, for an error or omission to be material, it is not enough that the accused has been misled; there must also be a failure of justice. Whether any court should apply s. 422 aforesaid will depend, among other things, on whetherthe irregularity involves the breach of a principle of general importance to the administration of criminal justice. If it does, the court would not apply s. 422, as this appears to us to be the same thing as the irregularity having occasioned a failure of justice. It could also be noted that the "error" alluded to in s. 156 of the CPC is the error in stating the offence or the particulars required to be stated in the charge, and not the error in stating the ingredients of an offence. That important distinction, whether an error in stating the particulars or an error in stating the ingredients, must be drawn for the purposes of ss. 156 and 422 of the CPC. This is because where it was an error or omission in stating the ingredients of an offence, it had been consistently held by the courts that the accused would have been misled and that there must have been a failure of justice. But in cases decided primarily under ss. 156 and or 422 of the CPC, courts had refused to invoke those provisions where it was an error or omission in stating the ingredients of an offence.

[42] The learned High Judge accepted that the four charges have complied with s. 152 of the CPC because they state the offence with which the respondent is charged (abuse of position for gratification); gratification is for his associate PPBM; and the charge also mentioned the law and section of the law against which the offence is said to have been committed (s. 23(1) of the MACC Act). The High Court Judge also agreed that the four charges contained particulars required by s. 153 of the CPC *ie*, time, place and the person giving the gratification. See paras. 77 and 78 of the grounds of judgment.

[43] However, the learned High Court Judge took the view that s. 154 of the CPC had not been complied with because the four charges did not state the manner in which the respondent had committed the offences. To fortify this point, His Lordship referred to the charges under s. 23(1) of the MACC Act in the following two cases:

(i) *PP v. Dato' Sri Mohd Najib Hj Abd Razak* [2020] 8 CLJ 319; and

(ii) *PP v. Arul Kanda Kandasamy & Another Case* [2023] 3 CLJ 770.

[44] In *Mohd Najib*'s case, the charge under s. 23(1) of the MACC Act reads as follows:

A Bahawa kamu antara 17 Ogos 2011 dan 8 Februari 2012, di Pejabat Perdana Menteri, Presint 1, Putarajaya, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawat badan awam, iaitu Perdana Menteri dan Menteri Kewangan Malaysia, telah menggunakan jawatan untuk suapan bagi diri kamu berjumlah empat puiuh dua juta Ringgit Malaysia (RM42,000,000.00) apabila kamu telah terlibat dalam keputusan bagi pihak
B Kerajaan Malaysia untuk memberikan jaminan kerajaan bagi pinjaman-pinjaman berjumlah empat billion Ringgit Malaysia (RM4,000,000,000.00) daripada Kumpulan Wang Persaraan (Diperbadankan) kepada SRC International Sdn Bhd, oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 23 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24 Akta yang sama.
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[45] In *PP v. Arul Kanda Kandasamy & Another Case* [2023] 3 CL J 770, the charge under s. 23(1) of the MACC Act reads:

Bahawa kamu di antara 22 Februari 2016 dan 26 Februari 2016, di Kompleks Jabatan Perdana Menteri, Pusat Pentadbiran Kerajaan
D Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam iaitu Perdana Menteri Malaysia dan Menteri Kewangan Malaysia telah menggunakan kedudukan kamu untuk mendapatkan suapan bagi diri kamu sendiri, iaitu, perlindungan daripada tindakan sivil atau jenayah berkaitan peranan kamu di dalam perjalanan operasi Syarikat 1 Malaysia Development Berhad (1 MDB) dengan cara
E mengambil tindakan mengarahkan Laporan Pengauditan 1 MDB yang telah dimuktamadkan oleh Ketua Audit Negara dipinda seperti di Lampiran A sebelum laporan berkenaan dimuktamadkan semula dan dibentangkan kepada Jawatankuasa Kira-Kira Wang Awam Negara (PAC), yang mengenainya kamu secara langsung mempunyai kepentingan, oleh yang demikian kamu melakukan suatu kesalahan di
F bawah Seksyen 23(1) Akta Suruhanya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24 Akta yang sama.

[46] In the first case (*Najib*'s case), the manner in which the offence was committed is stated that the accused made a decision on behalf of the Government of Malaysia. Whereas, in the second case, the manner in which
G the corruption was stated to have been committed is that the accused had taken an action by instructing that the finalised audit report be amended. Having referred to the above two charges, the learned judge concluded, firstly, that for the commission of an offence under s. 23(1), it is mandatory to state in the charge that the respondent (accused) had made a decision or
H had taken an action in a certain matter. Secondly, failure to state "makes any decision" or "takes any action" in the four charges rendered the four charges defective and not curable under ss. 156 and 422 of the CPC.

[47] Consequently, the learned judge held:

I (i) empat pertuduhan tersebut kabur. Pemohon terkeliru. Pemohon tidak tahu yang mana satu, adakah dia membuat keputusan atau mengambil tindakan dan berhubung perkara apa. Pemohon tidak seharusnya dibiarkan untuk membuat spekulasi.

(ii) empat pertuduhan tersebut cacat kerana tidak mematuhi keperluan mandatori s. 154 KTJ.

(iii) pemohon tidak boleh dipaksa untuk melalui prosiding jenayah yang tidak menghiraukan atau tidak selaras dengan kehendak undang-undang iaitu s. 154 KTJ. Ini sama dengan penyalahgunaan proses mahkamah.

(iv) pertuduhan cacat yang dikemukakan terhadap pemohon tidak boleh dipulihkan oleh s. 156 atau s. 422 KTJ.

(v) empat pertuduhan tersebut dibatalkan. Pemohon dilepaskan dan dibebaskan. (See paras. 104, 108, 109, 110, 114 of the grounds of judgment).

[48] It is observed that the learned High Court Judge did not state or make a finding whether the error or omission to state "makes any decision" or "takes any action" in each of the four charges is an error in stating the particulars of the offence or an error in stating the ingredients of the offence.

Grounds Of Appeal

[49] The appellant raised two grounds of appeal before us as follows:

(i) the learned High Court Judge erred in deciding that the four charges were defective because they do not disclose an offence known to law primarily on the basis Parti Pribumi Bersatu Malaysia (PPBM) is not an organisation which fall under the definition of "associate" as provided under the MACC Act; and

(ii) even if the four charges were defective (which is denied), the learned High Court Judge erred in invoking his inherent power to strike down the same as the respondent's application is an abuse of process; premature and the trial of the case has not started and this is not a fit and proper case for striking out.

[50] Taking both issues together, the sole question for determination by this court is did the High Court makes a correct decision in striking out the four charges?

Our Decision

[51] We begin by stating the four ingredients of an offence under s. 23(1) of the MACC Act. They are as follows:

(i) that the respondent is an officer of a public body;

(ii) that the respondent had used his position;

(iii) for any gratification; and

(iv) the gratification is for the respondent himself, his relative or associate.

[52] We agree with the appellant that the manner in which the offence was committed is not an ingredient of the offence, in other words, s. 23(1) does not require the appellant to state in each charge whether "the respondent made any decision" or "took any action" for the gratification. We also agree with the appellant that how the offence was committed relates to particulars of the offence and evidence will be adduced at the trial to show it's occurrence. Therefore, we are clear that the error or omission on the part of the appellant to state in each of the four charges whether the respondent made any decision or took any action is not an error in stating the ingredients of the offence. But, it is an error in stating the particulars of the offence. Thus, the learned High Court Judge erred when he failed to make a distinction between an error in stating the ingredients of the offence or an error in stating the particulars of the offence. The second error by the learned High Court Judge is he failed to make a finding whether the error here is in stating the ingredients of the offence or an error in stating the particulars of the offence.

[53] The High Court is bound by the Federal Court case of *Ravindran Ramasamy v. PP* [2015] 3 CLJ 421. The Federal Court had explained the distinction between error in stating the ingredients of the offence or error in stating the particulars of the offence and that if it is an error in stating the ingredients of the offence, the defective charge is not curable under s. 422 of the CPC. Whereas, error in stating particulars of the offence is curable under ss. 156 and 422 of the CPC. In the absence of any distinction and finding made on the nature of the error, the learned High Court Judge erred when he held the charges are defective and not curable under ss. 156 and 422 of the CPC.

[54] In the present appeal, we noted that each of the four charges stated that the respondent was an officer of a public body. The respondent was charged in his capacity as the Prime Minister of Malaysia and President of Parti Pribumi Bersatu Malaysia ('PPBM'). Therefore, the first ingredient of the offence is stated. The charge also alleges the respondent had used his position. Hence, the second ingredient is also stated. Next, the charge specifically mentioned the word gratification. Therefore, the third ingredient is also stated. The fourth ingredient is also satisfied because the charge states the gratification is for his associate, namely PPBM.

[55] As all the ingredients of an offence under s. 23(1) have been stated, in our view the charges are clear and unambiguous. In our opinion, the particulars contained in each of the four charges were sufficient to give the respondent notice of the matter with which he was charged. The respondent was not misled in any manner whatsoever merely because the lack of particulars. As such, there was no necessity on the prosecution to set out the manner or give further particulars as to how the offence was committed. In this regard, we find the learned High Court Judge erred when he held the charges were not clear and the respondent was misled.

[56] In addition, these four charges are distinguishable from the charges in the two cases (at [43] and [44]) referred to by the High Court Judge because the facts in those two charges are different from the facts in the present appeal. It is for the appellant to adduce evidence at the trial to show how these offences were committed.

> It was fallacious to say that where two or more accused were separately charged but jointly tried and no allegation of common intention was made in the charges, evidence of a common intention or arrangement between them was not admissible. If such evidence emerged in the course of the trial, there was no principle of law to say that the court could not make a finding of fact of such common intention or arrangement which was relevant to the charges brought against the accused.

[57] We now turn to the meaning of the word "organisation" in general. The dictionary meaning of the word organisation is "a group that formed for a particular purpose"; "group of people working together." Examples of political party using the word organisation in their name are:

(i) UPKO – United Progressive Kinabalu Organization @ Pertubuhan Kinabalu Progresif Bersatu;

(ii) USNO – United Sabah National Organization @ Pertubuhan Kebangsaan Sabah Bersatu;

(iii) SNPUO – Sabah National People's Unity Organization @ Pertubuhan Perpaduan Rakyat Kebangsaan Sabah; and

(iv) UMNO – United Malays National Organization @ Pertubuhan Kebangsaan Melayu Bersatu.

[58] We now look at the meaning of the word society under s. 2 of the Societies Act 1966.

> "society" includes any club, company, partnership, or association of seven or more persons whatever its nature or object, whether temporary or permanent, but does not include:
>
> (a) any company registered under the provisions of any written law relating to companies for the time being in force in Malaysia;
>
> (b) any company or association constituted under any written law;
>
> (c) any trade union registered or required to be registered under the provisions of any written law relating to trade unions for the time being in force in Malaysia;
>
> (d) any company, association or partnership formed for the sole purpose of carrying on any lawful business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members of thecompany, association or partnership;
>
> (e) any co-operative society, registered as such, under any written law;

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(f) any organization or association in respect of which there is for the time being in force a certificate (which may be granted, refused or cancelled at his discretion) by a person or authority appointed under the provisions of the written law for the time being in force relating to the registration of schools that such organization or association forms part of the curriculum of a school; or

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(g) any school, management committee of a school, parents association or parents and teachers association registered or exempted from registration under any law for the time being in force regulating schools.

C **[59]** The dictionary meaning of the word "society" is "organised group with common aim and interest."

[60] The common feature of organisation and society is that they are organised group of people with common aim and interest or for a particular purpose. The group consists of more than seven people. What makes society and organisation similar in nature is that a group of people who work together in an organised way for a shared goal. They have their own set of rules and regulations. These are the features the court must look at in deciding whether organisation includes society.

[61] In our opinion, common sense dictates that the court must be more liberal in interpreting the word organisation to make it wide enough to include a society, club, partnership or association. To accede to the respondent's interpretation would defeat the purpose of the Act. To borrow the word of the Supreme Court of India in the case of *M. Narayanan Nambiar v. State of Kerala* AIR 1963 SC 1116:

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> As the Act is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object, *ie*, to prevent corruption among public servants and to prevent harassment of the honest among them.

[62] In our view, given the ordinary meaning of organisation is a group formed for a particular purpose. As society is also a group formed for a particular purpose. Hence, society would fall within the definition of organisation. It follows that PPBM, a political society comes within the definition of associate as defined under s. 3(c) of the MACC Act.

[63] Hence, we are of the view that the learned High Court Judge erred in law when he ruled that the four charges did not disclose any offence known to law. Consequently, the learned High Court Judge erred in striking out the four charges on the ground of an abuse of process.

[64] For the aforesaid reasons, we allowed the appeal and set aside the order of the High Court. The case was remitted to the Sessions Court Kuala Lumpur for the next course of action.